



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/166017

PRELIMINARY RECITALS

Pursuant to a petition filed April 08, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Walworth County Department of Human Services in regard to Medical Assistance, a hearing was held on July 14, 2015, at Elkhorn, Wisconsin.

The issue for determination is whether the Disability Determination Bureau (DDB) correctly determined that the petitioner was not disabled.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: No Appearance

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Walworth County.
2. On November 6, 2014 the petitioner submitted a Medicaid Disability application alleging that she was disabled.
3. On February 17, 2015 Psychologist, [REDACTED], reviewed the petitioner's medical records and application. [REDACTED] concluded that the petitioner was not disabled. [REDACTED] opinion was that the petitioner has two severe mental impairments of depression and

anxiety. [REDACTED]'s further opinion was that these two severe mental impairments do not meet or equal either listing. The petitioner has no limitations in her activities of daily living, difficulties in maintaining social function, or episodes of decompensation, each of an extended duration. She has moderate limitations maintaining concentration, persistence, or pace. [REDACTED]'s conclusion was that the petitioner was not significantly limited in the area of understanding and memory. She further concluded that the petitioner was not limited in the area of sustained concentration and persistence with the exception of a moderate limitation maintaining attention and concentration for extended periods, and the ability to maintain regular attendance and be punctual within customary tolerances. With regard to social interaction, [REDACTED] found no limitations except for a moderate limitation accepting instructions and responding appropriately to criticism from supervisors. Lastly, [REDACTED] found no limitations in the area of adaptation with the exception of a moderate limitation with the ability to respond appropriately to changes in the work setting. The reason [REDACTED] found a few moderate limitations is that the petitioner reported some difficulties getting along with supervisors and others, and stated that she sometimes must re-read instructions. [REDACTED]'s opinion is these few moderate limitations limit the petitioner to unskilled work.

4. On February 13, 2015 [REDACTED] reviewed the petitioner's medical records related to her psoriatic arthritis. [REDACTED] limited the petitioner to light work. [REDACTED] noted that the petitioner's psoriatic arthritis is well controlled by Humira and methotrexate. At her most recent exam she had a normal range of motion and normal strength in all of her upper and lower extremities.
5. The DDB concluded that the petitioner was not disabled at step five because was capable of performing substantial gainful activity. On February 23, 2015 the DDB sent the petitioner a denial decision stating, "we have determined that you do not qualify for Medicaid-Disability based on the application that you filed.
6. On March 31, 2015 the petitioner requested that the DDB reconsider their denial decision.
7. On May 11, 2015 Psychologist, [REDACTED], Ph.D., reviewed the petitioner's medical records and application on reconsideration. [REDACTED] found the petitioner had three mental health severe impairments including depression, anxiety, and ADD. [REDACTED] found mild limitations with activities of daily living, maintaining social functioning, maintaining concentration, persistence, or pace. He found there were no episodes of Decompensation of an extended duration. [REDACTED] noted that the petitioner takes Adderall and Xanax for depression, anxiety, and ADD. The petitioner is noted to be intelligent, organized, and focused. She has participated in therapy, and by March 2015 her mood had stabilized. She is fairly active with activities of daily living. She cooks, clean, shops, and more. Although the petitioner indicates she has problems with concentration and getting along with others, the exam findings do not indicate these self-perceived limitations. [REDACTED]'s opinion was similar to [REDACTED] in that he also found there were a few areas of moderate limitations limiting the petitioner to unskilled work.
8. On May 5, 2015 [REDACTED] reviewed the petitioner's medical records related to her psoriatic arthritis. [REDACTED] limited the petitioner to light work. She noted that there was no synovitis and no issues with the petitioner's range of motion. The petitioner reported some pain, which the doctor found partially credible limiting her to light work.
9. The petitioner is 34 years old. She has two years of post-high school level education. She is currently working 15 hours per week as an office manager at a flooring company. She produces high quality work. Her supervisor would like her to work more hours, however, she receives insurance through BadgerCare Plus. She would not be eligible for BadgerCare Plus if her monthly gross wages increase above 100% of the federal poverty level. If she worked more, she believes that she may lose her BadgerCare Plus coverage. The petitioner has bi-polar/depression, an anxiety disorder, ADD, and psoriatic arthritis. She is compliant with her medication, and her

mental health issues are fairly well controlled. The petitioner is a single-mother of a nine-year-old child. She maintains her home cooking and cleaning. She enjoys sewing. In the morning is able to get up, get her child up, and get her child ready and off to school. She complains of pain due to her psoriatic arthritis, however, she is able to do yoga and stretching to help manage this pain.

DISCUSSION

In order to be eligible for MA as a disabled person, an applicant must meet the same tests for disability as those used by the Social Security Administration to determine disability for Supplemental Security Income (Title XVI benefits). Wis. Stat. § 49.47(4)(a)4. Title XVI of the Social Security Act defines “disability” as the inability to engage in any substantial gainful activity due to physical or mental impairments which can be expected to either result in death or last for a continuous period of not less than 12 months. 20 C.F.R. § 404.1505. Therefore, this administrative law judge is required to review the petitioner’s current MA appeal utilizing the same tests for disability as those used by the Social Security Administration in determining disability for Supplemental Security Income (Title XVI benefits).

Although the determination of disability depends upon medical evidence, it is not a medical conclusion; it is a legal conclusion. Thus, while the observations, diagnoses, and test results reported by a physician are relevant evidence, the opinions of the doctors as to whether an individual is disabled are not conclusive as to that determination.

In addition, the definitions of disability in the regulations governing MA, Supplemental Security Income (SSI), and Social Security Disability Insurance (SSDI) programs require more than mere medical opinions that a person is disabled in order to be eligible. There must be medical evidence that an impairment exists, that it is severe, that it affects an individual’s basic work activities, and that it will last 12 months or longer as a severe impairment. Therefore, while an individual’s testimony as to his or her impairments is important, it is not determinative. Allegations of physical or mental limitations must be supported by medical evidence in the record.

THE FIVE-STEP DISABILITY DETERMINATION PROCESS

The above requirements are delineated in five sequential tests established in the Social Security Administration regulations. These are general steps to evaluating a disability application, whether it includes only physical, only mental, or a combination of physical and mental impairments. Those tests are as follows:

1. An individual who is working and engaging in substantial gainful activity will be found to be not disabled regardless of medical findings. However, if an individual is not working, or is working but the earnings do not rise to the substantial gainful level, proceed to Step 2. 20 C.F.R. § 416.920(b).
2. An individual who does not have a “severe impairment” which significantly limits his or her ability to work will be found not disabled. However, if an individual is found to have a severe impairment, proceed to Step 3. 20 C.F.R. § 416.920(c).
3. If the individual’s severe impairment meets or equals a listing in 20 C.F.R. § 404, subpart P, Appendix 1, that individual will be determined disabled. However, if the individual’s severe impairment does not meet or equal a listing, proceed to Step 4. 20 C.F.R. § 416.920(d).

4. If the individual is capable (has the Residual Functional Capacity) to perform past work, the individual will be determined not disabled. However, if the individual does not have the capacity to perform past work, proceed to Step 5. 20 C.F.R. § 416.920(e).

(Note, if the individual has marginal education (less than 7th grade) and work experience of 35 or more years of unskilled arduous physical labor and can no longer perform past work at a customary exertional level, he or she will be determined disabled under 20 C.F.R. § 416.962) 20 C.F.R. § 416.920(f)(2).

5. If the individual is capable of performing any substantial gainful activity in the national economy, that individual will be determined not disabled. However, if the individual cannot perform any substantial gainful activity in the national economy, that individual will be determined disabled. 20 C.F.R. § 416.920(f)(1).

If it is determined that an applicant for MA is not disabled at the second step in the review, it is not necessary to review the case under any later test or tests. 20 C.F.R. §404.1521.

In addition, where an individual has an impairment or combination of impairments resulting in *both* (1) physical limitations and (2) mental (emotional and psychological) limitations, both of those separate types of impairments must be evaluated. As explained by the Code of Federal Regulations:

When we assess your *physical* abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis . . . When we assess your *mental* abilities, we first assess the nature and extend of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis.

20 C.F.R. 416.945(b) and (c).

PROCESSING OF PETITIONER'S DISABILITY APPLICATION

For Step 1, the petitioner is working. However, the petitioner is only working 15 hours per week, which is not considered substantial gainful activity. Therefore, the petitioner meets this step, and one must move to step two.

I note that although the petitioner meets step one, she testified that her main goal of the application was to qualify for MAPP coverage. Right now she is eligible for BadgerCare Plus because her income is below 100% of the FPL. The petitioner would like to work more hours, and make more money, but cannot do that and maintain her BadgerCare Plus benefits. 100% of the FPL for a household of two, the petitioner and her daughter, is slightly more than \$1300 per month in gross income. A person is considered to be at a substantial gainful employment level if the person makes approximately \$1100 per month. Thus, if the petitioner worked to the ability level that she indicated was possible given her health conditions, she would not be disabled at this step of the analysis. That is the not the case because she choses not to do that. Therefore, I must proceed to step 2.

For Step 2, in determining whether a disability is “severe” under 20 C.F.R. § 416.920(c), the DDB applies the following test:

If you do not have any impairment or combination of impairments, which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education and work experience.

The DDB concluded that the petitioner had several severe impairments including depression, anxiety, ADD, and psoriatic arthritis. The DDB had two psychologists review the file. Both the psychologists agreed that the petitioner had two severe impairments including depression and anxiety. One of the psychologists concluded that the petitioner's ADD was an additional severe impairment. Two doctors reviewed the petitioner's medical records regarding her psoriatic arthritis concluding that this was a severe impairment. I agree with the DDB on reconsideration that the petitioner's severe impairments include depression, anxiety, ADD, and psoriatic arthritis. Therefore, she meets this step, and I must continue to step 3.

Under Step 3, the petitioner's conditions do not meet or equal any listed impairment. The severity of the claimant's mental impairments, considered singly and in combination, do not meet or medically equal the criteria of listings 12.02, 12.04, and 12.06. In making this finding, I considered whether the "paragraph B" criteria are satisfied. To satisfy the "paragraph B" criteria, the mental impairments must result in at least two of the following: marked restriction of activities of daily living; marked difficulties in maintaining social functioning; marked difficulties in maintaining concentration, persistence, or pace; or repeated episodes of decompensation, each of extended duration. A marked limitation means more than moderate but less than extreme. Repeated episodes of decompensation, each of extended duration, means three episodes within 1 year, or an average of once every 4 months, each lasting for at least 2 weeks.

Because the claimant's mental impairments do not cause at least two "marked" limitations or one "marked" limitation and "repeated" episodes of decompensation, each of extended duration, the "paragraph B" criteria are not satisfied. Specifically, the petitioner is able to function at a fairly high level. Her employer reports that she produces very high quality work. She reports that although she does not think she could 40 hours per week, she could work 25 hours per week producing the same high quality work. In her opinion she could do all of this while maintaining her home and taking care of her nine year child. Even based upon the petitioner's own testimony, I do not believe that there are any marked limitations.

I have also considered whether the "paragraph C" criteria are satisfied. In this case, the evidence fails to establish the presence of the "paragraph C" criteria. Under applicable listings 12.02 and 12.04, there is no evidence of repeated episodes of decompensation each of extended duration. There is no evidence of a residual disease process that has resulted in such marginal adjustment that the claimant could not tolerate even minimal increases in mental demands or changes. Finally, there is no evidence of an inability to function outside of highly supportive living arrangement. In fact the petitioner lives in her own apartment taking care of all of the household duties and her nine year old child. Under applicable listing 12.06, there is not medically documented evidence of the complete inability to function outside of the home.

Under step 4, I find that the petitioner cannot perform her past relevant work as a server. The petitioner worked full time as a server at the [REDACTED]. Based upon the RFC that is consistent with the DDB's medical consultants, the petitioner is unable to perform this past relevant work. According to the DOT, a server is semi-skilled work. The psychologists reviewing the petitioner's medical records found that she was not capable of semi-skilled work due to her mental health limitations. I agree with these consultants. That said, I believe that the petitioner is able to perform her current job at a substantial gainful activity level. However, that is discussed below in step five.

Under step 5, I find that the petitioner can perform substantial gainful activity in the national economy. Once the petitioner proves that she cannot return to her former work, the agency must show that there are jobs in the national economy that the petitioner can perform. "In the ordinary case,' the agency meets their burden at the fifth step [of the disability determination analysis] 'by resorting to the applicable medical vocational guidelines (the grids), 20 C.F.R. § 404, Subpt. P, App. 2 (1986).'" *Rosa v. Callahan*,

168 F.3d 72, 78 (2d Cir. 1999) (quoting *Bapp*, 802 F. 2d at 604). The grids “take into account the Petitioner’s residual functional capacity in conjunction with the Petitioner’s age, education, and work experience.” *Id.*

In this case grid rule 202.21 applies. The petitioner is 34 years old. She is a younger individual with a high school degree or more. She has a history of skilled or semi-skilled work that is not transferable. Under these grid rules she is not disabled. I note that were her job history only unskilled work, she would still be not disabled under grid rule 202.20.

The results of the grid rules comport with my observations of the petitioner and the petitioner’s own testimony that she would like to work more hours. She testified that she would like to work about 25 hours per week. She believed that she could sustain her current job as an office manager at a flooring company for 25 hours per week. She is paid \$12 per hour. Working 25 hours per week at \$12 per hour, the petitioner would make \$1290 in monthly gross income. This would meet the definition of substantial gainful activity based upon the amount of monthly income. The petitioner’s goal with her appeal is to qualify for MAPP benefits. The income limit for MAPP is higher than the substantial gainful activity level for a disability determination; however, the reality is that the petitioner is not disabled. I have no doubt that the petitioner has some medical issues and some mental health issues, but I do not believe that the petitioner is disabled in that she is not able to work and participate in our national economy.

Lastly, I note that if the petitioner would like to work more and maintain health insurance coverage, the marketplace is an option. If her income goes above the BadgerCare Plus limits, she can apply for insurance coverage through the marketplace.

CONCLUSIONS OF LAW

The DDB correctly determined that the petitioner was not disabled.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

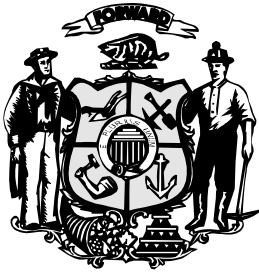
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 4th day of August, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 4, 2015.

Walworth County Department of Human Services
Disability Determination Bureau